instance of such an arrangement which was fraudulent in its inception, has declared all such agreements illegal. *Shepang Voting Trust Cases, supra.* The third sort of arrangement, consistently with the foregoing decisions, has been held legal and irrevocable. *Chapman* v. *Bates, supra.* A squarely contrary decision, however, has been reached by another court. *Harvey* v. *Linville Improvement Co.*, 118 N. C. 693.

In this state of the authorities, generalization upon the nature of the stockholder's voting power and the stockholder's duty as regards voting must be hazardous. The notion that the stockholder owes the duty to the other stockholders to express his personal judgment in respect to the control of the corporation, it is submitted, is contrary to principle, and has been properly repudiated. The voting power, it seems, is not, as Mr. Harriman contends, a property right capable of being irrevocably separated from the legal ownership, but is a right incident to the legal title of the shares, and, like the legal title, capable of being irrevocably separated from the beneficial ownership: a right which, subject to revocation, may be delegated by proxy to an agent, but which cannot be irrevocably alienated from the legal title. This view seems most convenient for the corporation, which need not inquire into the beneficial ownership, but may safely admit the registered holder's vote. It makes practicable a device for attaining legitimate permanence in corporate management, without closing the opportunity for attacking fraudulent combinations. Finally, although opposed by several decisions and many *dicta*, it seems in accord with the weight of authority.

LIABILITY OF TELEGRAPH COMPANIES. — No legal problems are of greater interest, or of more practical importance, than those arising from the application of existing law to new circumstances, and among these one which has been the subject of protracted conflict, and still remains without solution, is the liability of telegraph companies for the negligent transmission of messages. The two most difficult questions which arise are in regard to the right of the sendee, (1) to maintain an action, (2) to recover for mental suffering.

A recent text writer in an elaborate and careful article seeks to answer these questions in the affirmative. *Liability of Telegraph Companies*, by Morris Wolf, 42 Am. L. Reg. 715 (Dec. 1903). After showing that the English courts never allow the sendee to recover, the writer takes up the various theories upon which recovery has been permitted in this country. Of these, two are worthy of careful attention. Many jurisdictions allow the sendee to sue as the beneficiary of the contract between the sender and the company, while others permit recovery in tort on the general ground of negligence. The first theory, as Mr. Wolf indicates, must be very limited in its application, since a sendee is often injured where the contract was not really made for his benefit. The impracticability of doing justice upon this ground is shown by the decisions of Texas, the most prominent advocate of this theory, which seem to justify the author's suggestion that the courts of that jurisdiction have held these contracts to be for the benefit of the sender or sendee according to which party first brought suit. *Cf. Western Union Teleg. Co.* v. *Adams*, 75 Tex. 531, and *Potts* v. *Western Union Teleg. Co.*, 82 Tex. 545. Moreover, it is well settled that recovery for mental anguish will not be allowed in a contract action, and the Texas cases in allowing such damages have reached that result through the aid of the Texas code, which abolishes distinctions between actions in tort and contract. As regards the second theory, Mr. Wolf would agree with those jurisdictions which allow recovery in tort for substantial damage, but he considers this principle also inadequate to cover cases where the only damage is mental. To meet this last class of cases he proposes a third theory based upon the suggestion that a telegraph company, as a public servant, owes to every member of the community a duty to do its work carefully.

The writer is to be complimented on his thorough collection and careful analysis of the cases, but his conclusions seem open to criticism. To allow recovery against the company on the basis suggested, presents two difficulties.

First, it seems doubtful whether the duty of a public servant is as extensive as is suggested by the writer. A public service company differs from other companies only in the fact that it must do business, at a uniform and reasonable rate, with any person who presents himself. Other than this it is not obvious that its liability extends beyond that of ordinary companies. Accordingly a consignee, in a case where title remained in the consignor, has been denied recovery against a carrier of goods. *Ogden* v. *Coddington*, 2 E. D. Smith's Rep. (N. Y.) 317, 327. Secondly, granted that the company owes a public duty, any one suing for a breach thereof must show special damage. Where damage is required to establish a cause of action, as would seem the case here, mental suffering is not such damage as the court should regard. *Wyman* v. *Leavitt*, 71 Me. 227; *Davies* v. *Solomon*, L. R. 7 Q. B. 112. The doctrine finds some slight support. *Mentzer* v. *Western Union Teleg. Co.*, 93 Ia. 752. But, however beneficial its application might be, it seems a complete innovation, rather than existing law applied to new circumstances. As such it is a matter for the legislature rather than the courts, and an examination of the subject leads to the belief that while existing law makes recovery possible in certain instances, uniform relief for the sendee must come by statute. *Western Union Teleg. Co.* v. *Ferguson*, 157 Ind. 37.

STARE DECISIS. — Although the doctrine of *stare decisis* is everywhere recognized by the courts, a great deal of confusion exists as to the occasion and extent of its application. An attempt is made in a recent article to state the proper limitations of the doctrine as applied in the United States. *The Doctrine of Stare Decisis — Its Application to Decisions Involving Constitutional Interpretation*, by William J. Shroder, 58 Central L. J. 23 (Jan. 8, 1904). The writer asserts at the outset that the rule, which under certain conditions makes the decisions of courts binding as precedents, is one of public policy based on the advantages of stability in the law. It was by reason of such a rule in the Roman law that the "decreta" and "rescripta" of the Emperor in particular cases were conclusive for all similar cases. The binding force of the precedent was assumed very early in the English law, and decisions of the House of Lords are now binding not only upon all inferior tribunals, but also upon that body itself. In considering the American doctrine of *stare decisis* the writer finds that its limitations are of two kinds, internal, or those which determine when a decision is binding as a precedent, and external, or those which determine to what extent a precedent is binding. The former, as stated, are that there must be (1) a deliberate and solemn decision, (2) made after argument, (3) on a question necessary to the determination of the case. Such a decision is a binding precedent in (4) the same court, (5) in inferior courts, (6) where the very point is again in controversy. Two external limitations are noted to the effect that a precedent is not binding, (1) when the decision is manifestly incorrect in statement or application, or (2) when the decision, although correct at the time of utterance, is rendered unsatisfactory by change of conditions. The second will be found to qualify the first where, for example, such property interests have been acquired under an incorrect statement of the law as to render a change inexpedient. Mr. Shroder's conclusion is that the rule of *stare decisis*, so limited, has the same application to constitutional decisions as to those involving private right.

THE NEGOTIABLE INSTRUMENTS LAW. — In the Michigan Law Review for January, Mr. Amasa M. Eaton recounts at length the history of this law and reviews the extended discussion to which it has given rise. 2 Mich. L. Rev. 260. The article is particularly timely since the Negotiable Instruments Law is at present before the Michigan Legislature. Commencing with the birth of the American Bar Association in 1878, the writer traces step by step the develop-